THE DOMICILE OF A WIFE. — The old saying that a husband and wife are one, and the husband that one, has to-day no more foundation in law than in fact. By almost universal statutes, the wife may contract, receive and convey property, sue and be sued, just as though unmarried;[1] she may keep her earnings, and sue for them in her own name;[2] she may contract with her husband,[3] and in most states even prosecute actions against him.[4] This recognition of the wife as a distinct legal entity reaches its culmination in a recent New York decision where a wife had lived apart from her husband for twenty-six years. No decree of separation had been procured, nor were grounds therefor shown. Yet it was held in administering her estate that the wife had acquired a separate domicile. *In re Crosby's Estate*, 85 Misc. (N. Y.) 679 (Surr. Ct., N. Y. County).[5]

By entering the marriage relation, the parties signify their intent to live together and produce children.[6] The law accordingly imposes upon them the mutual duty of cohabitation.[7] Thus the whole theory of the marital relation involves the idea of a single home;[8] and the husband, as the traditional head of the family, and the one primarily[9] liable for its support, ordinarily selects that home.[10] Under normal circumstances, therefore, the husband's domicile determines that of the wife, because her home in fact follows his. However, she is now everywhere allowed to have a separate domicile under some circumstances. The English courts, chafing under the strict common-law rule, are gradually, on one ground or another, conceding this right to the wife.[11] The prevailing American doctrine is that where she has grounds for divorce, she may establish a separate domicile anywhere for the purpose of bringing divorce proceedings.[12] Under like circumstances, the United States Supreme

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[1] Skinner *v.* Skinner, 38 Neb. 756, 57 N. W. 534; see STIMSON, AMER. STAT. LAW, §§ 6482, 6450, 6453, 6454.

[2] Jordan *v.* Middlesex R. Co., 138 Mass. 425; Harmon *v.* Old Colony R. Co., 165 Mass. 100, 42 N. E. 505; Brooks *v.* Schwerin, 54 N. Y. 343; see STIMSON, AMER. STAT. LAW, §§ 6520, 6522.

[3] Morrison *v.* Brown, 84 Me. 82, 24 Atl. 672; Winter *v.* Winter, 191 N. Y. 462, 84 N. E. 382; see STIMSON, AMER. STAT. LAW, § 6480.

[4] Wilson *v.* Wilson, 36 Cal. 447; Wood *v.* Wood, 83 N. Y. 575; see 28 HARV. L. REV. 109. For a history of legislation in regard to married women, see 6 So. L. REV. 649–662.

[5] Following a previous decision in the same jurisdiction, Matter of Florance, 54 Hun (N. Y.) 328. For a statement of the case, see RECENT CASES, p. 207. Accord, Shute *v.* Sargent, 67 N. H. 305.

[6] STEWART, MAT. & DIV., §§ 84, 173; STEWART, HUSB. & WIFE, § 59; TIFFANY, PERSONS, § 31.

[7] While this duty cannot be specifically enforced in the United States, STEWART, HUSB. & WIFE, § 72; 1 BISHOP, MAR., DIV., & SEP., § 69; TIFFANY, PERSONS, § 31; yet it is given legal recognition. Barnes *v.* Allen, 30 Barb. (N. Y.) 663; Westlake *v.* Westlake, 34 Oh. St. 621; Roberts *v.* Faisby, 38 Tex. 219.

[8] "Established by the husband, and cared for by the wife, where the two shall dwell together." Gordon *v.* Yost, 140 Fed. 79, 80; see also Warrender *v.* Warrender, 9 Bligh. 89, 117.

[9] The wife may also be liable. See STIMSON, AMER. STAT. LAW, § 6410.

[10] But there may well be instances where the wife in fact does the selecting. See Birney *v.* Wheaton, 2 How. Pr. N. S. 519.

[11] Deck *v.* Deck, 2 Sw. & Tr. 90; Niboyet *v.* Niboyet, 4 P. D. 1; Stathatos *v.* Stathatos, [1913] P. D. 46. See for a discussion of this last case, 26 HARV. L. REV. 447.

[12] Ditson *v.* Ditson, 4 R. I. 78; Cheever *v.* Wilson, 9 Wall. (U. S.) 108; Champon

Court has allowed her a separate domicile for purposes other than divorce.[13] Thus the only qualification on the wife's absolute right to acquire a separate domicile has come to be at the most that she must not without cause be living apart from her husband.

To acquire a separate domicile, she must intend to abandon her husband's home, and set up an independent home of her own.[14] It is true that when she has no cause for separation such an intent is inconsistent with her legal obligation to make her home with her husband. But this inconsistency is not *per se* sufficient to prevent her acquiring such a domicile. It is perfectly possible for one to acquire a domicile in a place where he is forbidden by law to take up a permanent abode.[15] It might be urged that when her legal duty is to make her home with her husband, since domicile is a question of legal home, her domicile remains the same as his. But domicile is usually a legal conclusion based upon facts, and a fiction is used only when there is no home in fact, or where the person making the home is not *sui juris*, as in the case of an infant or lunatic. The wife can undoubtedly be physically present at the home. The only reason therefore for arbitrarily forcing the husband's domicile upon her must be that she is not sufficiently *sui juris* to be capable of acquiring a separate home. To be sure, the fact that the fiction of identity has been destroyed might not alone give her such power. But by judicial construction of modern statutes she may have legal possession independent of,[16] and even adverse to,[17] her husband. In other words, not only has she an identity, but she is *sui juris* in that identity. When she in fact obtains a separate home which by law she may now hold in her own right and not for her husband, it is submitted that domicile must be decided upon these facts and not by any fiction.

Undoubtedly, the gravest policy of the law is to preserve the integrity of the home; and consequently the rule of the New York court should not be adopted if it in any way tended to controvert this policy.[18] But looking at the matter in a common-sense way, it can hardly be supposed that rules as to domicile will have any deterrent effect if the wife in fact wants to leave her husband though without sufficient cause.[19] More-

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v. Champon, 40 La. Ann. 28, 3 So. 397; Tolen *v.* Tolen, 2 Blackf. (Ind.) 407; Hardin *v.* Alden, 9 Greenl. (Me.) 140. See MINER, CONFLICT OF LAWS, § 50. Massachusetts courts would probably allow the wife only to retain the last matrimonial domicile. See Burtis *v.* Burtis, 161 Mass. 508, 37 N. E. 740.

[13] Williamson *v.* Osenton, 232 U. S. 619. Accord, Watertown *v.* Greaves, 112 Fed. 183; Gordon *v.* Yost, *supra*. See Champon *v.* Champon, *supra*, at p. 31.

[14] DICEY, CONFLICT OF LAWS, 114; Jopp *v.* Wood, 4 DeG., J. & S. 616; Urquhart *v.* Butterfield, 37 Ch. D. 357.

[15] Attorney-General *v.* Pottinger, 6 H. & N. 733; Young *v.* Pollack, 85 Ala. 439, 5 So. 279; see Hodgson *v.* De Beauchesne, 12 Moore's P. C. 285.

[16] Stanley *v.* National Union Bank, 115 N. Y. 122; Mygatt *v.* Coe, 147 N. Y. 456, 42 N. E. 17.

[17] Hartman *v.* Nettles, 64 Miss. 495, 8 So. 234; Warr *v.* Horneck, 8 Utah, 61, 29 Pac. 1117; Union Oil Co. *v.* Stewart, 158 Cal. 149, 110 Pac. 313.

[18] Under modern social conditions, diverse interests of husbands and wives probably often compel them to live apart. Such an arrangement may be perfectly consistent with the integrity of the home.

[19] Nor would her leaving her husband be necessarily a hardship on him. He no longer has the duty to support her. Constable *v.* Rosener, 82 N. Y. App. Div. 155, 85 N. Y. Supp. 376; Ogle *v.* Dersham, 91 N. Y. App. Div. 551, 86 N. Y. Supp. 1101.

over, the ancient conception of the wife as a being incapable of caring for herself has been entirely overthrown by modern legislation; and the sphere of woman in the world to-day certainly entitles her to a position in the law in every way on a par with man.

THE RIGHT TO A HEARING BEFORE ADMINISTRATIVE TRIBUNALS. — The remarkable development of administrative law within the past few decades, and the extent to which bodies primarily executive in character have supplanted the courts in the exercise of many functions formerly conceived to be of solely judicial nature are phenomena so familiar that comment is rendered trite.[1] Nevertheless the law of the subject is apparently still in its infancy,[2] and this is particularly true of that part dealing with procedure. Doubtless freedom from procedural shackles is one of the chief ends sought in tribunals created in response to a demand arising out of the inefficiency of our traditional judicial procedure.[3] But some limitation must be imposed upon the exercise of executive discretion in the conduct of quasi-judicial inquiries. In this country this limitation has been furnished by the express requirements of "due process of law" in federal and state constitutions. English tribunals not proceeding according to express authority of the supreme Parliament have also always been held within similar limits.[4]

In general, where deprivation of liberty or property is involved, the essentials of due process of law on both sides of the Atlantic are notice and hearing.[5] One familiar exception to this is found in those cases where the immediate exigencies of police protection sanction summary deprivation of property without any hearing whatsoever.[6] Summary imposition of penalties for violation of immigration laws has also been justified as a condition imposed upon a privilege which might be denied altogether.[7] But it is well settled that the mere fact that administrative officials are invested with powers involving deprivation of property in their exercise, does not justify such deprivation upon mere official fiat, without hearing.[8] The formal procedure of purely judicial

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[1] For an account of the extent of this development, see an article by Roscoe Pound, entitled "Executive Justice," 55 AM. L. REG. 137.

[2] WYMAN, ADMINISTRATIVE LAW, § 112.

[3] For an explanation of the development of quasi-judicial administrative boards, see 55 AM. L. REG. (*supra*), p. 144 *et seq.*

[4] MAGNA CHARTA, cap. 39; Clark's Case, 5 Coke, 64*a*; COKE, 2 INST. 45 *et seq.* See MCGEHEE, DUE PROCESS OF LAW, pp. 24–26, and cases cited in note 5, *infra*.

[5] MCGEHEE, DUE PROCESS OF LAW, pp. 73–75; Bagg's Case, 11 Coke, 99 *a*; The King *v.* The University of Cambridge, 8 Mod. 148; Painter *v.* Liverpool Gas Co., 3 Ad. & El. 433; Stewart *v.* Palmer, 74 N. Y. 183; Londoner *v.* Denver, 210 U. S. 373; and see Simon *v.* Craft, 182 U. S. 427, 436; Louisville, etc. R. Co. *v.* Schmidt, 177 U. S. 230, 236; Bonaker *v.* Evans, 16 Q. B. 162, 174.

[6] North American Cold Storage Co. *v.* Chicago, 211 U. S. 306; Valentine *v.* Englewood, 76 N. J. L. 509, 71 Atl. 344; Lawton *v.* Steele, 152 U. S. 133.

[7] Such is the reasoning of the court in Oceanic Steam Navigation Co. *v.* Stranahan, 214 U. S. 320. It is perhaps sufficient when supported by the strong presumption to be indulged in favor of the constitutionality of legislative enactments.

[8] Londoner *v.* Denver, *supra*; Stewart *v.* Palmer, *supra*; see Board of Education *v.* Rice, [1911] A. C. 179, 182; The King *v.* Local Government Board, [1911] 2 Ir. Rep. 331, 344.